



Brownfields Initiatives In The 2001-2003 State Budget

PUB-RR-672

September, 2001

Summary of Changes, Improvements and New Programs

Wisconsin's 2001-2003 State Biennial Budget (2001 Wisconsin Act 16) includes a number of initiatives to encourage the cleanup and redevelopment of brownfield properties in Wisconsin. These initiatives include changes and improvements to existing programs, as well as the creation of new programs to address needs that were not met by previous budget bills.

Wisconsin's brownfields initiative is a multi-agency effort to encourage the cleanup and redevelopment of contaminated properties. The 2001-2003 budget is the fifth major legislative initiative in Wisconsin since 1994 to address the growing concerns associated with brownfields.

Background

The brownfields initiative in Wisconsin began in 1994, with the passing of Wisconsin's Land Recycling Law. The previous three state biennial budgets, 1995-1997, 1997-1999 and 1999-2001, expanded on the existing financial and liability tools for lenders, local governments, and purchasers of brownfields.

Many of these changes have come about through the efforts of the Brownfields Study Group, an advisory group created in 1998 by the State Legislature. The Wisconsin Department of Natural Resources coordinated this group in 1998 and again in 2000. The Study Group has

worked to provide suggestions to the Legislature on how to improve existing brownfields programs, and to identify needs not met by current programs. Many of the Study Group's recommendations were included in the 1999-2001 and 2001-2003 state budgets.

Please note:

This document summarizes the statutory changes and funding allocations in the budget related only to brownfields. For statutory language and the rest of the 2001-2003 state budget, check out a copy of 2001 Wisconsin Act 16 on the following web site: <http://www.legis.state.wi.us/billtrack.html>, or call the Legislative Document Room at 608-266-2400 for more information.

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Wisconsin Department of Natural Resources
PO Box 7921, Madison, WI 53707



Financial Incentives - DNR

Brownfield Site Assessment Grant

Agency: Department of Natural Resources

Cite: s. 292.75, Wis. Stats.

Contact: Percy Mather, 608-266-9263



The DNR's Site Assessment Grant program was created in the 1999-2001 budget and provides funding for local governments to take preliminary steps at brownfield properties. The following program changes were made in the current budget:

- funding is increased to \$1.7 million dollars available in each year of the biennium;
- expands the type of eligible sites to include contiguous brownfields properties, whether owned by one owner or multiple owners; and
- clarifies that asbestos abatement activities are an eligible grant expense, but only if the abatement is part of a demolition project.

Dry Cleaner Environmental Response Fund Program

Agency: Department of Natural Resources

Cite: s. 292.65 and s. 292.66, Wis. Stats.

Contact: Robin Schmidt, 608-267-7569

The Dry Cleaner Environmental Response program is a reimbursement program for dry cleaners for the investigation and cleanup costs of dry cleaning facilities. The following changes were made in the current budget:

- chapter 292.66, Wis. Stats., relating to interim actions, has been deleted; interim actions, as defined in ch. NR 700, are still an option for a dry cleaner, should site conditions warrant, and reimbursement will be allowed under ch. 292.65, Wis. Stats.;
- the higher deductibles for closed facilities have been eliminated;
- facilities that closed before September 1, 1998, will now have an additional two years to submit an application for reimbursement;
- all facilities using perchloroethylene (perc) in their drycleaning processes must have it delivered in a direct-coupled, closed loop system to be eligible for reimbursement; and
- discharges from service providers and chemical suppliers that occurred prior to September 14, 1997, are now eligible for the DERP program.

Environmental Fund

Agency: Department of Natural Resources

Cite: s. 342.14(1r), Wis. Stats.

Contact: Renee Sanford, 608-267-3859

A number of environmental programs, including the Department of Commerce's Brownfields Grant Program and the Site Assessment Grant, are paid for through the Environmental Fund.

The budget increases the revenues to the Environmental Fund by:

- increasing the vehicle registration fee from \$6 to \$9 per vehicle, which increases revenues to the Environmental Fund; this was done in order to pay for many of the new and expanded brownfields programs in the budget; and
- extending the collection of the vehicle registration fee, which was designated to end in 2001, until December 31, 2003.



Financial Incentives - DNR

Green Space Grant Program - NEW!

Agency: Department of Natural Resources

Cite: s. 292.79, Wis. Stats.

Contact: Anna Thomas, 608-264-6007



DNR will administer a new \$1 million grant program for local governments to promote the cleanup of brownfields involving green space as an end use. Grants will be given to local governments to remediate sites that will have a long-term public benefit, including the preservation of green space, the development of recreational areas or the use of a property by the local government.

Land Recycling Loan

Agency: Department of Natural Resources

Cite: s. 281.60, Wis. Stats.

Contact: Maureen Hubeler, 608-266-0849

The DNR's Land Recycling Loan Program offers 0% interest loans to local governments for investigation and remediation of brownfields and landfills. The following changes were made in the current budget:

- applications will be accepted at least twice a year;
- during a semi-annual loan program, the 40% limit of funds used for landfills will be calculated on a fiscal year basis;
- applicants may use additional, credit-quality collateral that meets typical financial underwriting criteria and provides adequate security for loans; and
- demolition is an eligible cost to the program, when necessary for remediation purposes.

Sustainable Urban Development Zone (SUDZ) Program

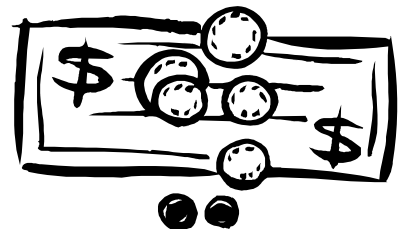
Agency: Department of Natural Resources

Cite: s. 292.77, Wis. Stats.

Contact: Anna Thomas, 608-264-6007

The Sustainable Urban Development Zone (SUDZ) program was established in the 1999-2001 biennial budget, and awarded five Wisconsin communities with funds to promote the use of financial incentives to investigate and cleanup brownfields. In the current budget, the following program changes were made:

- the program is continued at a funding level of \$525,000;
- the City of Fond du Lac is awarded \$250,000, and the City of Platteville will receive \$150,000 to clean up and investigate brownfields in their communities; and
- DNR will award the remaining \$125,000 to communities through a competitive application process; the funds are for the investigation and cleanup of brownfields.



Financial Incentives - Department of Commerce

Brownfields Grant

Agency: Department of Commerce
Contact: Jason Scott, 608-261-7714

Cite: s. 560.13 and s. 560.139, Wis. Stats.

This Department of Commerce grant is available to local governments and individuals to fund the investigation, cleanup and redevelopment of brownfields. The following funding and program changes were made in the current budget:

- the funding for Commerce's Brownfield Grant was increased from a biennial appropriation of \$12.2 million to \$14 million. \$7 million is available annually; as part of this funding, gaming revenue was transferred into the environmental fund - \$500,000 in fiscal year 2002 and \$1 million in fiscal year 2003;
- eliminates the requirement that Commerce must allocate a specified amount of total money for grants of certain amounts;
- expands the eligible applicants to include all of the following: individuals, partnerships, limited liability companies, corporations, nonprofit organizations, cities, villages, towns, counties, and trustees, including a trustee in bankruptcy.
- specifies that Brownfield grant awards cannot be used to pay for DNR or EPA liens, or to pay delinquent property taxes or any interests or penalties associated with delinquent taxes; and
- awards the following communities grants:
 - the city of Kenosha receives \$1 million for demolition and rehabilitation of the former American Brass Factory;
 - the City of Beloit receives \$100,000 for the acquisition and cleanup of sites in the 4th and 5th Street rail corridor and adjacent industrial properties; and
 - the City of Amery receives \$386,600 for acquisition, demolition and cleanup of existing land and structures related to the Apple River project.



In addition, Commerce must award Economic Development Grants for brownfields activities to the Menomonee Valley Partners and the Milwaukee Economic Development Corporation for \$375,000 in fiscal year 2002 and in fiscal year 2003. These grants are funded from the total funding available for the Brownfields Grant program.

Gaming Economic Diversification Grants and Loans

Agency: Department of Commerce
Contact: Todd Kearney, 608-266-6675

Cite: s. 560.138, Wis. Stats.

The Gaming Economic Diversification Grants and Loans are available for a variety of economic development projects.

- the program is expanded to allow brownfield remediation as one of many eligible project expenses.

Voluntary Party Liability Exemption (VPLE) Process

VPLE Statutory Changes

Agency: Department of Natural Resources
Contact: Michael Prager, 608-261-4927

Cite: s. 292.15, Wis. Stats.

The budget includes two minor statutory changes to the existing Voluntary Party Liability Exemption (VPLE) process.

1. Under current VPLE law, the liability exemption can be assigned to future property owners. However, future property owners are required by statute and as conditions of a Certificate of Completion (COC) to maintain institutional controls (e.g., a deed restriction which requires maintenance of a cap). The budget bill includes a statutory change which clarifies that a voluntary party who no longer owns or controls a property would still be covered by the exemption from liability if the property is not maintained and monitored as required by the statute and DNR regulations. The following changes are included in the budget:



- the law is changed to clarify that the requirement to maintain and monitor the property (s. 292.15(2)(a)4 and s. 292.15(2)(ae)4, Wis. Stats.) applies only to the voluntary parties if they own or control the property; and
- a new section is added (s. 292.15(2)(b)(4), Wis. Stats.) which clarifies that the liability exemptions continue to apply to a voluntary party who no longer owns or controls a property, even if the person in current possession or control fails to maintain and monitor the property.

2. The second change is to expand the sites with off-site contamination that can obtain the VPLE. This change allows parties to receive a COC for properties where a hazardous substance exists on the property that originates from an off-site source if they qualify for the off-site exemption. The statute (s. 292.15(2)(ag), Wis. Stats.) was changed to allow a full COC to be issued for properties impacted by contamination from off-site in both soil and groundwater. Before this change was made, the statute referred only to the section regarding off-site contamination in groundwater (s. 292.13(1), Wis. Stats.) and not to off-site contamination in soil (s. 292.13(1m), Wis. Stats.).



Local Government Tools

LGU Exemption & Stewardship

Agency: Department of Natural Resources

Cite: s. 292.11(9)(e)1m.f., Wis. Stats.

Contact: Dan Kolberg, 608-267-7500



The 1999-2001 biennial budget allowed local government units (LGUs) to qualify for the LGU liability exemption for property they purchased using a DNR Stewardship Grant. This change was made so that local governments can use these grants to convert brownfields properties into parks and open space, and at the same time qualify for the LGU exemption.

When the law was written in 1999, it only referenced properties purchased using Stewardship monies available from the original Stewardship program, and did not reference projects getting funds from the new Warren Knowles-Gaylord Nelson Stewardship 2000 Program. The exemption now covers properties purchased with either the original or the new Stewardship funds.

Off-Site Discharge Exemption & Sediments

Agency: Department of Natural Resources

Cite: s. 292.13(1m), Wis. Stats.

Contact: Percy Mather, 608-266-9263

The budget expands the current off-site discharge exemption to include an exemption for contaminated sediments. The off-site discharge exemption is intended to protect property owners from having to investigate and clean up environmental contamination that has migrated from a source located on a neighbor's property. Not only are persons protected if contamination migrates onto their property and impacts the soil or groundwater, the budget clarifies that the off-site discharge exemption also applies to situations where contaminated sediment has migrated onto a property.

Negotiation & Cost Recovery

Agency: Department of Natural Resources

Cite: s. 292.35, Wis. Stats.

Contact: Marie Stewart, 608-267-2465

The budget bill modifies the process and procedures for a local government to negotiate with parties responsible for environmental pollution on properties owned by the local government. Negotiations can address remediation plans for the property, and the cost that each responsible party will share towards the total site investigation and remediation costs.

The budget expands the applicability of the negotiation and cost recovery process so that local governments can use it for sites and facilities that they don't currently own, if they commit to paying at least 50% of the net investigation and remediation costs (total investigation and remediation costs, minus any financial assistance that the LGU receives for the site or facility, times 50%).



Other Issues

Bonding for State-Funded Cleanups

Agency: Department of Natural Resources
Contact: Renee Sanford, 608-267-3859

Cite: s. 20.866(2)(tg), Wis. Stats.

The budget increases the amount of money that the DNR can use for state-funded cleanup actions. The bill provides \$3 million in general obligation bonding authority to conduct remedial action at contaminated sites. The request would increase DNR's bonding authority for remedial action from \$38 million to \$41 million. Bonding can be used for (a) state-funded cleanup under the environmental repair statute (s. 292.31, Wis. Stats.) or hazardous substance spills statute (s. 292.11, Wis. Stats.) when construction is involved and no responsible party is known, willing or able to take the necessary action; and (b) the state's cost-share at federal Superfund or Leaking Underground Storage Tank Trust Fund sites.



Funds Received from Settlement

Agency: Department of Natural Resources
Contact: Renee Sanford, 608-267-3859

Cite: s. 20.370(2)(du), Wis. Stats.

The budget bill creates a new, continuing DNR account for expenditures of moneys received as part of settlement agreements or orders at specific sites. The new appropriation would be used to pay for environmental remediation at specific sites. Before this change was made, the DNR was not always able to use funds received as part of a settlement for environmental cleanup of the site subject to the settlement. The new appropriation could be used in situations where, for example, a court order or other settlement agreement can be reached with an insurance company or responsible party, where the funds are earmarked for a specific site and then the state can use those moneys for remedial action at that site.



How to Get More Information

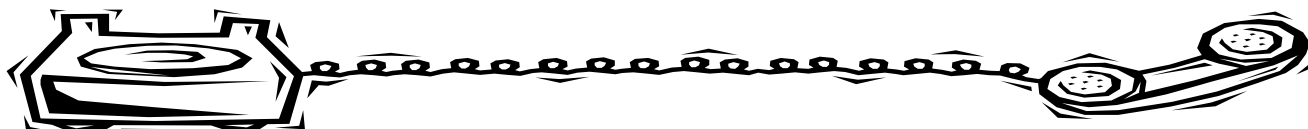


Web Site and Telephone Access

The Remediation and Redevelopment web site has many features to assist property owners or local governments. For example, the RR database of contaminated sites is now available on the web to make site investigations easier. The majority of RR publications and other information about brownfields can also be accessed through the RR web site at **www.dnr.state.wi.us/org/aw/rr**.

If you do not have access to the web you can get information about RR by calling the Information Line at:

- 800-367-6076 (in-state long distance) or
- 608-264-6020 (Madison-area or out-of-state long distance).



This document may contain some information about certain state statutes and rules but does not necessarily include all of the details found in the statutes/rules. Readers should consult the actual language of the statutes/rules to answer specific questions.

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This publication is available in alternative format upon request. Please call 608-267-3543 for more information.

